

FILED
BILLINGS DIV.

IN THE UNITED STATES DISTRICT COURT

2011 SEP 7 AM 10 38

FOR THE DISTRICT OF MONTANA

PATRICK E. DUFFY, CLERK

BY _____
DEPUTY CLERK

BILLINGS DIVISION

TIMOTHY J. LONGJAW,

Petitioner,

vs.

MIKE MAHONEY; ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Respondents.

Cause No. CV 11-95-BLG-RFC

ORDER OF DISMISSAL

On August 25, 2011, Petitioner Timothy J. Longjaw submitted a document titled "Injunctive Relief" in this Court. He is a state prisoner proceeding pro se.

Longjaw is proceeding in the Montana Supreme Court with a direct appeal from his conviction in Montana's Fourth Judicial District Court, Missoula County. New counsel recently entered an appearance in the case, Notice, *State v. Longjaw*, No. DA 11-0087 (Mont. Aug. 23, 2011). No merits brief has been filed as yet.

Longjaw challenges his conviction, his sentence, the manner in which his case was or is being processed, and the manner in which the record is or is not being kept

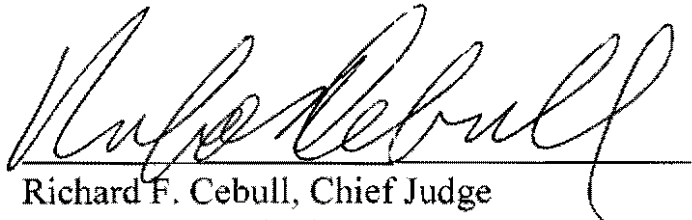
in state court. Some of his concerns cannot be addressed in federal court until he has properly exhausted the remedies available to him in the courts of the State of Montana. 28 U.S.C. § 2254(b). There is no reason to believe that counsel will be unable properly to protect Longjaw's due process rights, *e.g.*, *Draper v. Washington*, 372 U.S. 487, 498-500 (1963); *Douglas v. California*, 372 U.S. 353, 354-55 (1963); *Griffin v. Illinois*, 351 U.S. 12, 13-14 (1956). This action is premature.

Based on the foregoing, the Court enters the following:

ORDER

This action is DISMISSED WITHOUT PREJUDICE. A certificate of appealability is DENIED because Longjaw is in the midst of litigating his February 2011 direct appeal to the Montana Supreme Court. The Clerk of Court shall enter, by separate document, a judgment of dismissal. Motions for reconsideration, relief from the judgment, or of any other kind will not be entertained and will be stricken if filed.

DATED this 7th day of September, 2011.


Richard F. Cebull, Chief Judge
United States District Court